THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MARK A. ARTHUR, CIRILO MARTINEZ, PARI NAJAFI, and HEATHER MCCUE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SALLIE MAE, INC.,

Defendant.

JUDITH HARPER,

Plaintiff/Intervenor,

v.

ARROW FINANCIAL SERVICES, LLC,

Defendant.

CLASS ACTION

NO. 10-cv-00198-JLR

CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS IN CONNECTION WITH AMENDED SETTLEMENT

Noted for Consideration:
Friday, September 14, 2012, 1:30 p.m.

ORAL ARGUMENT

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I. INTRODUCTION

Class Counsel file this memorandum in support of their motion for an award of attorneys' fees and out-of-pocket costs in the total amount of $4.83 million, or 20% of the $24.15 million Amended Settlement Fund (with no additional payment of costs), and Service Awards of $2,500 for three of the four representative Plaintiffs.

Although Class Counsel have performed significant work on behalf of the Class in the nearly 18 months since the original Settlement was presented for approval in December 2010 -- including by conducting additional necessary discovery and depositions, negotiating a $4.65 million increased recovery for the Class, addressing multiple motions brought by the Plaintiff/Intervenor, and re-noticing an expanded Class -- counsel do not seek any additional payment. Instead, counsel seek the same dollar amount sought with the original Settlement.[1] Class Counsel's fee request of 20% of the Amended Settlement Fund, costs included, is substantially lower (as percentage) than the 24.8% fee requested originally.

Class Counsel seek fees under the percentage-of-the-fund method. The Ninth Circuit's benchmark in such cases is 25% of the fund, *plus* recovery of costs. Here, Class Counsel seek 20% of the Fund, without any additional payment for costs; if such costs are accounted for, the effective percentage drops to 19%. And this does not take into account the value of the equitable relief that is the core benefit provided by the Settlement, and for which the Ninth Circuit enhances the value of settlements for purposes of fee analyses. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002) (prospective practice changes are the sort of "nonmonetary benefits conferred by the litigation" that support a requested fee). Class Counsel's request is also

[1] The original fee motion sought $4,875,000 in attorneys' fees. Dkt No. 51. Class Counsel subsequently agreed to pay for a Supplemental Publication Notice rather than depleting the Fund to pay for that Notice. *See* Dkt. No. 92 at 5. The subtraction of $45,000 from Class Counsel's original requested fee, as reflected in the current fee request of $4,830,000, represents counsel's payment of the $45,000 amount. *See* Preliminary Approval of Amended Settlement ¶ 6(c) (Dkt. No. 216).

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supported by a lodestar-multiplier cross-check. Class Counsel seek a lodestar enhanced by a 2.59 multiplier, well within the range for such multipliers established by the Ninth Circuit. *Id.* at 1051 & n.6.

Class Counsel respectfully submit that their fee request is appropriate in light of the extraordinary result achieved for the Class, which includes the ability to stop the automated calls to cellular phones that are the entire basis for this litigation, as well as total payment by Sallie Mae of $24.15 million, the largest TCPA settlement of which Class Counsel are aware. Service Awards to three of the four representative Plaintiffs are also well-supported.

II. ARGUMENT.

"Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir 2003) (quoting Fed. R. Civ. P. 23(e)). Where counsel seek fees from a common fund, courts have discretion to use one of two methods to determine whether the request is reasonable: "percentage-of-the-fund" or "lodestar/multiplier." *Id.* at 963-64; *see also In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010); *Hanlon v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998). "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

A. Application of the Percentage-of-the-Fund Method Is Warranted

The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole."). Courts prefer a percentage-of-the-fund model over a lodestar-multiplier approach in cases where it is possible to ascertain the value of the settlement through a common fund. *See In re Bluetooth*, 654 F.3d at 942 ("Because the benefit to the class is easily quantified in common-

fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."); *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) ("[U]se of the percentage method in common fund cases appears to be dominant.").[2]

By contrast, courts rely on the lodestar method under circumstances not applicable here, *i.e.*, when "there is no way to gauge the net value of the settlement or of any percentage thereof." *Hanlon*, 150 F.3d at 1029; *In re Bluetooth*, 654 F.3d at 941 (lodestar appropriate "where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized"). This limited use of the lodestar method relates in part to its potential deterrent effect: "[I]t is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino*, 290 F.3d at 1050 n.5; *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (application of the lodestar method may encourage "abuses such as unjustified work" and therefore "does not achieve the stated purposes of proportionality, predictability and protection of the class").

B. The Percentage-of-the-Fund Analysis Supports Counsel's Fee Request

Class Counsel's request for $4.83 million in attorneys' fees and costs—20% of the common fund, or 19% once costs are deducted—is fair and reasonable under the circumstances of this case. First, the requested percentage is less than the 25% benchmark for attorneys' fees in the Ninth Circuit. *See Vizcaino*, 290 F.3d at 1047-48. The requested fee is also supported by factors

[2] Further confirming courts' preference for awarding attorneys' fees in class cases on a percentage-of-the-fund-basis, an empirical study based on eighteen years of published opinions on settlements in 689 common fund class action and shareholder derivative settlements in both state and federal courts found that: (1) 83% of cases employed the percentage-of-the-recovery method, and (2) the number of courts employing the lodestar method has declined over time, from 13.6 percent from 1993-2002 to 9.6% from 2003 to 2008. *See* Theodore Eisenberg & Geoffrey P. Millery, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 *Journal of Empirical Legal Studies* 248, 267-69 (2010) (attached as Exhibit E to the Selbin Decl.).

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that courts in the Ninth Circuit use to assess the reasonableness of fees under the percentage-of-the-fund approach: (1) the results achieved (including results beyond the benefits of a cash fund); (2) the risk involved with the litigation; (3) the contingent nature of the fee; and (4) awards made in similar cases. *Id.* at 1048.[3]

1. Class Counsel Have Obtained An Excellent Result.

In determining the amount of attorneys' fees to award, a court should examine "the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *In re Omnivision*, 559 F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."); Federal Judicial Center, *Manual for Complex Litigation*, § 27.71, p.336 (4th ed. 2004) (the "fundamental focus is on the result actually achieved for class members"). The Amended Settlement is a terrific result for the Class, comprising both core prospective relief and the largest TCPA monetary settlement of which Counsel are aware.

Equitable Relief: Courts "should consider the value of the injunctive relief obtained as a 'relevant circumstance' in determining what percentage of the common fund Class counsel should receive as attorneys' fees." *Staton*, 327 F.3d at 974; *Vizcaino*, 290 F.3d at 1049 (affirming enhanced fee award where "counsel's performance generated benefits beyond the cash settlement fund").[4] Class Counsel's interviews with Plaintiffs and over 100 Class Members during their workup and the pendency of this litigation revealed that putting a stop to the automated calls to their cellular phones is the single most important goal of this litigation, something confirmed subsequently by Class Counsel's post-settlement contact with well over 4,000 Class Members. Declaration of Jonathan D. Selbin in Support of Motion for Final Approval of Amended

[3] Class Counsel will review and respond to any objections submitted by the July 3, 2012 objection deadline in reply papers due August 1, 2012.

[4] *See also Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *7 (N.D. Cal. Jul. 18, 1997) (1/3 fee award where settlement provided additional non-monetary relief); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 (E.D.N.Y 2003) ("[T]he substantial injunctive relief here should inform [the court's] decision on awarding fees.").

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Settlement and Motion for Attorneys' Fees and Costs and Service Awards ("Selbin Decl.") ¶¶ 16, 53. The Amended Settlement allows Class Members to *completely* end the automated calls at issue via a simple and straightforward process.

Monetary Relief: In addition to prospective relief, Class Counsel obtained a total payment by Sallie Mae of $24.15 million, out of which eligible Class Members who file qualified claims will receive Monetary Awards. While the precise amount of each Class Member's Monetary Award cannot yet be determined, the parties estimate that each qualified claimant will receive an average recovery of at least $20-$40. The fact that the $24.15 million Amended Settlement does not constitute the full measure of statutory damages potentially available to the Class does not merit any deviation from the 25% benchmark. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators," because "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citations omitted); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (settlement of only a fraction of potential recovery fair).

The meaningful prospective and monetary relief offered by the Amended Settlement reflects the excellent work of skilled and experienced Class Counsel throughout pre-filing investigations and negotiations, the drafting and filing of multiple complaints, discovery, and several rounds of settlement negotiation. This Court has specifically addressed the adequacy of Class Counsel, and held that "[Class] counsel are qualified, competent, and have extensive experience in prosecuting complex class actions." Dkt. No. 206 at 17.

Class Counsel's efforts to master the relevant facts and legal questions early-on through extensive investigation and informal discovery further support the fee, as those efforts made favorable resolution possible prior to the filing of dispositive motions or motions to compel arbitration that could have significantly weakened Plaintiffs' claims. *See, e.g., Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 539 (W.D. Wash. 2009) (approving prompt settlement after

thorough pre-filing negotiations).[5] Given the results achieved, the requested fee is reasonable.

2. The Risk Involved with the Litigation Supports the Fee Request.

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision*, 559 F. Supp. 2d at 1046-47; *see also Vizcaino*, 290 F.3d at 1048 (risk of dismissal or loss on class certification is relevant to evaluation of a requested fee).

To prevail in any ongoing litigation of this case, Plaintiffs would be required to successfully litigate a number of evolving legal issues at the center of their claims.[6] Indeed, this Court expressed agreement with Plaintiffs' contention that they "have good reason for not pursuing litigation further given Sallie Mae's affirmative defenses, the risk that any judgment they obtain in this case would be subject to remittitur, and the risk of protracted appeals." Dkt. No. 206 at 17. A fee award of 20% of the Fund (*including* cost reimbursement) is appropriate

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[5] Of course, because of the early settlement, Class Counsel spent fewer hours prosecuting this action than they would had the case proceeded to trial. As one court explained, however, "counsel should be rewarded, not punished" for obtaining a prompt settlement without running up lodestar through needless litigation. *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 52-53 (2000). Moreover, awarding Class Counsel a reasonable percentage of the common fund promotes the public policy of encouraging timely settlements. *Vizcaino*, 290 F.3d at 1051 (noting "it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief").

[6] Substantial risks associated with ongoing litigation of Plaintiffs' claims include but are not limited to (1) the possibility that the Court could conclude that under the TCPA, the "prior express consent" allowing an entity to make autodialed calls need not be received at the time the loan originates but may instead be received any time during the multi-year life of the loan, *see Moore v. Firstsource Advantage, LLC*, No. 07-CV-770, 2011 WL 4345703, *10 (W.D.N.Y. Sept. 15, 2011) (holding that "prior express consent" may be provided after an account is opened); (2) the difficulty of certifying a litigation class in a TCPA case, *see Kenro, Inc. v. Fax Daily, Inc.*, 962 F. Supp. 1162, 1169 (S.D. Ind. 1997) (denying class certification of TCPA claims); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550-57 (2011) (reversing class certification where plaintiffs failed to establish commonality); (3) the likelihood that Sallie Mae would seek to compel individual arbitration of many Class Members' claims in light of *AT&T Mobility LLC v. Concepcion*, -- U.S. --, 131 S. Ct. 1740 (2011); (4) the risks inherent in any jury trial; and (5) the risk that any favorable rulings, particularly on issues of first impression such as the definition of "prior express consent" under the TCPA, could be reversed on appeal. *See also* Plaintiffs' Motion for Preliminary Approval of Amended Settlement Agreement at 24-25 (Dkt. No. 184). Sallie Mae's success on any one of these multiple fronts would substantially reduce or entirely eliminate a class damages award.

when considered against such risks. *See, e.g., In re Broadcom Corp. Sec. Litig.*, 2005 U.S. Dist. LEXIS 41993, *19 (C.D. Cal. Sept. 12, 2005) (25% fee award appropriate where case involved complex factual and legal disputes where "[m]uch of the law governing the parties' claims and defenses is sparse, unsettled and still evolving").

3. Class Counsel Faced Substantial Risk of Non-Payment.

The requested fee is also justified by the financial risks undertaken by Class Counsel in representing the Class on a contingency basis. *See Vizcaino*, 290 F.3d at 1050 (Class counsel's representation of the class on a contingency basis is relevant to the assessment of the fee); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (affirming 25% fee as reward to counsel "for carrying the financial burden of the case, effectively prosecuting it and, by reason of their expert handling of the case, achieving a just settlement for the class"). The public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk they might be paid nothing at all for their work. *In re Washington Public Power Supply System Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

Class Counsel have devoted substantial resources to the prosecution of this case with no guarantee that they would be compensated for their time or reimbursed for their expenses. *See* Selbin Decl. ¶ 67-68; Terrell Decl. ¶ 17; Wilson Decl. ¶ 3; Campion Decl. ¶ 4; Swigart Decl. ¶ 3; Kazerounian Decl. ¶ 3. To the contrary, there was a substantial risk of nonpayment, particularly in light of the litigation risks outlined above. In spite of these risks, Class Counsel zealously represented the interests of the Class.

4. Fees in Similar Actions.

Courts may refer to awards made in other settlements of comparable size when determining whether an award is reasonable. *See Vizcaino*, 290 F.3d at 1050 n.4. Class Counsel have requested an amount less than the 25% Ninth Circuit benchmark. In addition, the requested fee is consistent with or lower than the fees and costs awarded in cases involving similar TCPA claims and/or similarly sized settlements. *See, e.g., Bellows v. NCO Financial Systems, Inc.*,

2009 U.S. Dist. LEXIS 273, at *4-*5 (S.D. Cal. Jan 5, 2009) (awarding fees and costs equal to 31.6% of TCPA settlement); *Satterfield v. Simon & Schuster, Inc. et al*., No. 06-2893 (N.D. Cal. Aug. 6, 2010) (collected in Ex. F to Selbin Decl.) (fees and costs of 25% of TCPA fund); *see also Weinstein v. AIRIT2ME, et al.*, No. 06-cv-484 (N.D. Ill. Dec. 18, 2008) (collected in Ex. F to Selbin Decl.) (fees and costs of 23% of TCPA fund); *Grays Harbor Adventist Christian Sch. v. Carrier Corp.*, 2008 U.S. Dist. LEXIS 106515, at *13 (W.D. Wash. Apr. 24, 2008) (fee is reasonable where it represents 21.8% of the combined value of the settlement of $38.3 million).[7] In short, Class Counsel's fee request is reasonable under the "percentage of the fund" method.

C. A Lodestar-Multiplier Cross-Check Confirms the Requested Fee.

The Ninth Circuit has encouraged, but not required, courts to conduct a lodestar cross-check when assessing the reasonableness of a percentage fee award. *See In re Bluetooth*, 654 F.3d at 944 (stating "we have also encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method" of determining fees).[8] The first step in the lodestar method is to multiply the number of hours counsel reasonably expended on the litigation by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029. At that point, "the resulting figure may be adjusted upward or downward to account for several factors including the quality

[7] It may be appropriate to award fees below the 25% benchmark in "megafund" cases with a very large common fund. *Vizcaino*, 290 F3d at 1047-48, 1052 (surveying fee awards where settlements ranged from $50-$200 million); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) (discussing *Vizcaino* data and observing that fees of less than 25% are at times awarded in "megafund cases," described as "cases of $50 Million or more"). The fund in this case is not a megafund. The $24.15 million fund is comparable to funds in other cases in this Circuit in which courts have awarded fees at or above the benchmark. *See, e.g.*, *Craft*, 624 F. Supp. 2d at 1127 (noting that while megafunds may merit a lower percentage fee, "[f]or cases of the size of this fund [$25.5 million], 25% is very much the norm").

[8] Some courts have opted not to perform a lodestar cross-check where counsel have achieved exceptional results through early settlement. *See, e.g., Glass v. UBS Fin. Servs*., 2007 U.S. Dist. LEXIS 8476, *49 (N.D. Cal. Jan. 26, 2007) ("where the early settlement resulted in a significant benefit to the class, the Court finds no need to conduct a lodestar cross-check"); *HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.*, 2010 U.S. Dist. LEXIS 109829 (S.D. Cal. Oct. 15, 2010) (awarding 25% fee in settlement reached prior to decision on second motion to dismiss); *see also Craft*, 624 F. Supp. 2d at 1122 ("A lodestar cross-check is not required in this circuit, and in some cases is not a useful reference point.").

of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id*. (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)); *see also In re Bluetooth*, 654 F.3d at 942. The lodestar-multiplier method confirms the propriety of the requested fee here.

1. Class Counsel's lodestar is reasonable.

Through April 30, 2012, Class Counsel devoted more than 3,963 hours to the investigation, litigation and resolution of this complex case, thereby incurring more than $1,729,885 in lodestar.[9] Counsel's time was spent investigating the claims of the Settlement Class Members, conducting discovery, researching and analyzing legal issues, engaging in settlement negotiations, briefing the fairness of the original and the Amended Settlement, litigating multiple motions brought by the Plaintiff/Intervenor, overseeing the creation and dissemination of Class Notice, and responding to Class Member inquiries.[10]

The time Class Counsel devoted to this case is reasonable. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work that might have resulted from having multiple firms working on this case. Selbin Decl. ¶ 63.

Class Counsel's hourly rates are also reasonable, and have been approved by this Court.[11] In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895

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[9] Selbin Decl. ¶¶ 66, Ex. B; Terrell Decl. ¶ 8, Ex. A; Wilson Decl. ¶ 5, Ex. B; Campion Decl. ¶ 6, Ex. A; Swigart Decl. ¶ 6, Ex. A; Kazerounian Decl. ¶ 6, Ex. A.

[10] Class Counsel anticipate spending an additional several hundred hours seeing this case through its final resolution, including by overseeing the claims process and attending the final approval hearing. *See* Selbin Decl. ¶ 55. In providing this general overview, Plaintiffs and Class Counsel do not waive and, in fact, specifically reserve all protections afforded by the attorney-client privilege and work product doctrine.

[11] Courts apply each biller's current rates for all hours of work performed, regardless of when the work was performed, as a means of compensating for the delay in payment. *In re Wash. Pub. Power Supply Sys. Sec Litig.*, 19 F.3d at 1305.

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n.11 (1994). Class Counsel are experienced, highly regarded members of the bar with extensive expertise in the area of class actions and complex litigation involving consumer claims like those at issue here. *See* Selbin Decl. ¶¶ 2-7, Ex. A; Terrell Decl. ¶¶ 2-7; Wilson Decl. ¶ 2, Ex. A. Class Counsel's customary rates used in calculating the lodestar here have been approved by this Court and other courts in this District. *See Carideo v. Dell*, No. 06-cv-1772, at 4 (W.D. Wash. Dec. 17, 2010) (reviewing fee application submitted by, *inter alia*, Mr. Selbin and Ms. Terrell, and concluding that "hourly rates used to calculate the requested fee are reasonable"), collected in Ex. D to Selbin Decl.; *Pelletz*, 592 F. Supp. 2d at 1326 (approving hourly rates for work performed in Seattle that ranged from $415 to $760)[12]; *Grays Harbor*, 2008 U.S. Dist. LEXIS 106515, at *5-*16 (approving the hourly rates of Jonathan D Selbin following a reasonableness review, and rejecting objections), collected in Ex. D to Selbin Decl.[13]

2. A multiplier is warranted.

The fee requested by Class Counsel reflects a multiplier of 2.59 on the total lodestar of Class Counsel. Courts in the Ninth Circuit use similar factors in determining the reasonableness of a percentage-of-the-fund-award as they do in determining an adjustment of lodestar when conducting a lodestar-multiplier cross check, namely: results achieved, risks stemming from the complexity of the case, and the risk of nonpayment. *See Hanlon*, 150 F.3d at 1029*; see MCL 4th* § 14.122, at 261. Class Counsel refer the Court to the above discussion of those factors.

By way of summary, the multiplier here is reasonable given the outstanding result of $24.15 million *and prospective relief* that Class Counsel have achieved for the Class through their skill, experience, and effort; the risks involved in this litigation, particularly given Sallie Mae's

[12] In *Pelletz*, Judge Coughenour found that Mr. Selbin and Lieff Cabraser Heimann, & Bernstein, LLP's rates were "reasonable for the work performed in each of [Counsel's] respective communities by attorneys of similar skill, experience, and reputation." 592 F.Supp.2d at 1326. The Bellows court also approved the rates of the Law Offices of Douglas J. Campion and Hyde & Swigart as being reasonable. *Bellows*, 2009 U.S. Dist. LEXIS 273, at *4.

[13] *See also* Selbin Decl. ¶¶ 60-62 (listing federal courts specifically approving Class Counsel's rates as reasonable); Terrell Decl. ¶ 12 (same).

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substantial opposition and the numerous issues of law that are complex and truly novel; and the fact that counsel agreed to represent the Class on a contingent basis, thereby risking their own resources with no guarantee of recovery. *See Hanlon*, 150 F.3d at 1029.

Further, in *Vizcaino*, the Ninth Circuit noted that multipliers have ranged from 0.6 to 19.6, and upheld an award with a 3.65 multiplier in that case. *Vizcaino*, 290 F.3d at 1050-51 and n.6. *See also Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (25% fee reasonable where multiplier was 6.85); *Craft*, 624 F. Supp. 2d at 1123 (awarding 25% fee, plus costs, where multiplier was 5.2).[14] The multiplier of 2.58 is on the lower end of the spectrum of multipliers identified in *Vizcaino*, and is in line with the multipliers awarded in other courts within the Ninth Circuit. The lodestar-multiplier cross check thus supports the fee request here.

D. The Payment of Costs is Fair and Reasonable

Class Counsel are not seeking payment of costs in addition to their recovery of 20% of the Fund, and will instead be reimbursed costs out of that 20%. As such, there is no need for detailed analysis. Nonetheless, recovery of those costs is appropriate in its own right. "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). Class Counsel incurred out-of-pocket costs totaling $134,114.61, primarily to cover expenses related to legal research, investigation, travel, mediation fees, and administrative costs such as copying, mailing, and messenger expenses.[15] These out-of-pocket costs were necessary to secure the resolution of this

[14] *See also In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (awarding 25% of $126 million fund, representing a 6.96 multiplier; noting that multipliers "need not fall within any pre-defined range"); *In re RJR Nabisco, Inc. Sec. Litig*, 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992) (25% of $72.5 million fund; multiplier of 6); *In re Merry-Go-Round Enterprises*, 244 B.R. 327 (Bankr. D. Md. 2000) (awarding 40% of settlement recovery in accordance with terms of contingent fee agreement where substantial legal obstacles existed; multiplier was 19.6).

[15] Selbin Decl. ¶¶ 65-66, Ex. C; Terrell Decl. ¶ 16, Ex. B; Wilson Decl. ¶ 7, Ex. C; Swigart Decl. ¶ 8, Ex. B; Kazerounian Decl. ¶ 8.

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litigation, and should be recouped. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in a class action litigation).

E. Service Awards for Three Named Plaintiffs are Reasonable.

Modest service awards compensating named plaintiffs for work done on behalf of the Class attempt to account for financial or reputational risks associated with litigation, and promote the public policy of encouraging individual plaintiffs to undertake the responsibility of representative lawsuits. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646-47 (S.D. Cal. 2011) ("Incentive awards are fairly typical in class actions."). The requested service awards of $2,500 are modest under the circumstances, and well in line with awards approved by federal courts in Washington and elsewhere. *See Pelletz*, 592 F. Supp. 2d at 1329-30 & n.9 (approving $7,500 service awards and collecting decisions approving awards ranging from $5,000 to $40,000); *Grays Harbor*, 2008 U.S. Dist. LEXIS 106515, at *16 (approving $3,500 awards). These awards will compensate Plaintiffs Arthur, Martinez and Najafi for their time and effort in stepping forward to serve as proposed class representatives, assisting in the investigation, keeping abreast of the litigation, and reviewing and approving the proposed settlement (and amended settlement) terms after consulting with Class Counsel. *See* Declarations of Mark A. Arthur, Cirilo Martinez, Para Najafi. Sallie Mae has agreed to pay these awards if approved.

III. CONCLUSION

Class Counsel respectfully request that this Court award the requested attorneys' fees and costs and Class Representative Service Awards in full.

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